

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KHALIL NEWMAN,)	
)	
Plaintiff,)	
v.)	Civil Action No. 22-556
)	
OLIVER JACOB BURROWS, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

The case was referred to Magistrate Judge Lisa Pupo Lenihan in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Civil Rules 72.C and D. Magistrate Judge Lenihan has issued two Report and Recommendations addressing Motions to Dismiss filed by the Defendants. The first Report and Recommendation was filed April 11, 2023, and recommended that Defendant Prime Care, Inc's Motion to Dismiss (ECF No. 28) be granted in part and denied in part. ECF No. 50. Objections to the Report and Recommendation were due on April 28, 2023. However, the Report and Recommendation, which was mailed to Plaintiff's address of record at Erie County Prison, was returned to the Court as not deliverable and unable to be forwarded. This happened because Mr. Newman had been moved from Erie County Prison to Lawrence County Prison. ECF No. 51 (Notice of Change of Address). On April 27, 2023, the Court remailed the April 11, 2023 Report and Recommendation to Plaintiff at Lawrence County Prison, and sua sponte extended the deadline for Objections to May 12, 2023. ECF Nos. 52 & 53. No Objections have been filed.

The second Report and Recommendation was filed May 3, 2023, and recommended that Defendants Erna Craig, Mercer County Prison Board Members, Officer Stoner, and Deputy Warden Reichard's Motion to Dismiss (ECF No. 41) be granted. ECF No. 54. The May 3, 2023

Report and Recommendation was mailed to Plaintiff at Lawrence County Prison on May 3, 2023. Objections to the Report and Recommendation were due on May 22, 2023. No Objections have been filed.

After de novo review of the pleadings and the documents in the case, together with each of the Report and Recommendations, the following order is entered:

AND NOW, this 21st day of June, 2023, it is hereby ORDERED as follows:

The April 11, 2023 Report and Recommendation as to Motion to Dismiss ECF No. 28

IT IS ORDERED that the Report and Recommendation, ECF No. 50, filed on April 11, 2023, is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Prime Care, Inc.'s Motion to Dismiss (ECF No. 28) is granted in part and denied in part.

The Motion is GRANTED without prejudice as to Plaintiff's Fourteenth Amendment deliberate indifference claim. Plaintiff is permitted leave to file a second amended complaint, which sets forth sufficient factual allegations to plausibly show:

- (1) that Prime Care employed a policy or custom that prevented its employees from providing necessary medical treatment or that Prime Care failed to establish a policy to address appropriate medical care when an inmate sustains a serious injury while incarcerated, and
- (2) that the hand injury he sustained constitutes a serious medical condition.

The Motion to Dismiss Plaintiff's negligence cause of action is DENIED as premature. This denial is without prejudice to Prime Care's ability to raise it in a subsequent motion.

IT IS FURTHER ORDERED that Prime Care shall provide the identity of nurse Jane Doe if she is affiliated with Prime Care, or, if not, to so inform the Court within ten days of this Order being filed.

The May 3, 2023 Report and Recommendation as to Motion to Dismiss ECF No. 41

IT IS ORDERED that the Report and Recommendation, ECF No. 54, filed on May 3, 2023, is adopted as the Opinion of the Court.

A. IT IS FURTHER ORDERED that the Motion to Dismiss filed by Erna Craig, Mercer County Prison Board Members, Officer Stoner, and Deputy Warden Reichard (ECF No. 41) is granted as follows.

1. The Motion is GRANTED as to all claims against the Mercer County Prison Board Members, both in their individual and official capacities. Said claims are dismissed without leave to amend.
2. The Motion is GRANTED as to the failure to protect, conspiracy, and right to grievance procedure claims asserted against Defendants Craig, Reichard, and Stoner. Said claims are dismissed without leave to amend.
3. The Motion is GRANTED as to the conditions of confinement claim asserted against Defendants Craig, Reichard, and Stoner. Said claim is dismissed. Plaintiff is permitted leave to file an amended complaint as to said claim.

B. With respect to Plaintiff's requests for relief, IT IS ORDERED as follows:

1. Plaintiff's request for injunctive relief in Count 3 is dismissed, as moot.
2. Plaintiff is not legally entitled to request compensatory damages for mental or emotional injury with regard to Count 1.
3. Plaintiff's request for nominal damages is limited to \$1.00.
4. Plaintiff is not legally entitled to seek punitive damages against the Defendants Craig, Reichard and Stoner in their official capacities.

C. IT IS ORDERED that Plaintiff is granted leave to file a second amended complaint setting forth:

- (1) a plausible constitutional claim for denial of medical benefits, including allegations sufficient to show personal involvement by Defendants Craig, Reichard, Stoner, nurse Jane Doe and Prime Care;
- (2) a plausible constitutional claim for conditions of confinement claim against Defendants Craig, Reichard, and Stoner, including each Defendant's alleged personal involvement in the alleged constitutional violation;
- (3) requested relief that comports with the legal authority as cited in the May 3, 2023 Report and Recommendation;
- (4) if alleging a failure to follow protocol/procedures, the specific protocol or procedures that were not followed, the specific individuals who were involved, and how that failure caused the alleged denial of medical treatment;
- (5) sufficient facts to show a plausible municipal liability claim under *Monell* if he wishes to pursue either a denial of treatment claim against Defendants Craig, Reichard and Stoner in their official capacities, or an independent municipal liability claim against the municipal entity; and
- (6) all factual allegations in support of any claims against Defendant Burrows and the relief requested if he wishes to maintain this lawsuit against Burrows.

D. Plaintiff Khalil Newman is granted leave to file an amended complaint consistent with the Report and Recommendation and this Memorandum Order.

Plaintiff's amended complaint is due by July 24, 2023. If no amended complaint is filed by July 24, 2023, Defendants shall file an Answer to the surviving claims by July 31, 2023.

E. This matter is returned to the Magistrate Judge for further proceedings.

s/Marilyn J. Horan
Marilyn J. Horan
United States District Court Judge

cc: Khalil Newman, pro se
Lawrence County Corrections
111 S. Milton Street
New Castle, PA 16101-3595